

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE: B-205999**

**DATE: July 21, 1982**

**MATTER OF: Electro Marine Industries, Inc.**

**DIGEST:**

1. Based on evidence of record, GAO cannot conclude that Navy deliberately attempted to delay processing of protester's qualified products list (QPL) application so as to preclude protester from competing under QPL procurement. Consequently, and since protester has not shown that award was made to next low QPL bidder at an unreasonable price, award cannot be questioned even if Navy negligently delayed processing of application.
2. The critical time under GAO decisions and applicable regulation for determining whether a bid is acceptable for a qualified products list procurement is the time of bid opening, not award.
3. GAO rejects protester's allegation that Navy improperly granted November 1981 bid opening extension so as to permit another bidder opportunity to obtain qualified products list status. Navy's position that extension was granted solely to allow additional time for bidders to prepare bids cannot be questioned. GAO also rejects additional allegation that protester's December 1981 request for bid extension was improperly denied since request was for inappropriate, indefinite extension pending outcome of protester's QPL application which might have been denied.
4. Award on basis of urgency notwithstanding pendency of protest cannot be questioned given production time requirement for installation of required switchboards

during 1983 ship overhaul and estimate that if installation date is not met significant monetary damage to Government will arise.

Electro Marine Industries, Inc. (EMI), protests the rejection of its low bid under invitation for bids (IFB) No. N00024-82-B-4024 issued by the Department of the Navy, Naval Sea Systems Command (NAVSEA), for digital combat systems switchboards to be installed during overhaul of the destroyer USS JOHN YOUNG. The IFB required the switchboards to be on a qualified products list (QPL). NAVSEA rejected the bid because EMI's switchboards were not QPL items as of the time of bid opening on December 18, 1981. Pursuant to a Determination and Findings under Defense Acquisition Regulation (DAR) § 2-407.8(b) (1976 ed.), NAVSEA thereafter awarded the contract--notwithstanding the pendency of EMI's protest--to the second lowest bidder, Dynalec Corporation, on January 29, 1982, on the grounds that "delivery of the item will be unduly delayed by failure to make award immediately." Subsequently, on February 4, 1982, EMI's switchboards were listed on the QPL.

EMI alleges that the Navy: (1) unreasonably delayed EMI's QPL processing; (2) should have amended the IFB to make the date of award, rather than the date of bid opening, controlling for listing of QPL status; (3) improperly extended the bid opening date from November 19 to December 10, 1981, in order to give Dynalec an opportunity to become listed on the QPL, but improperly denied the protester's December request for a further bid opening extension; and (4) did not have a valid basis on the grounds of urgency for proceeding with the Dynalec award.

We deny the protest.

We note that EMI does not question the need for switchboards to be listed on a QPL since the switchboards are a critical element of the shipboard combat system. However, EMI alleges that NAVSEA improperly delayed the company's QPL application.

The Navy generally denies that it took an unreasonably long time to process EMI's QPL application. The time

taken was approximately 3 months from the date of EMI's initial QPL application to the date QPL status was granted to the company. Both EMI and the Navy have disputed the implications to be drawn from the individual steps involved in the application and testing process. For example, EMI contends the Navy should have made arrangements for the steps--and transmittal of test findings--by phone to expedite the QPL process rather than through written communications on which the Navy insisted. On the other hand, the Navy insists that EMI's certification processing was "completed more quickly than a typical QPL application."

In any event, we have held that inadvertent action of an agency which precludes a potential supplier from competing on a procurement does not constitute a compelling reason to resolicit so long as adequate competition and reasonable prices were obtained and there was no deliberate or conscious attempt to preclude the potential supplier. See Air Inc., B-188780, September 15, 1977, 77-2 CPD 192, which also involved an allegation that the Navy unreasonably delayed the processing of another QPL application. Therefore, even if it can be said that the Navy negligently delayed the processing of EMI's QPL application, this circumstance would not, in itself, affect the validity of the award unless the conditions stated in the cited decision are not present in this procurement; however, in our view, the record shows these conditions do exist. There is no evidence that NAVSEA deliberately attempted to delay the processing of EMI's QPL application so as to preclude EMI from competing on this procurement. Moreover, there were three other responsive bidders within close range of EMI's low bid, and EMI has not shown Dynalec's bid to have been unreasonable in price.

Second, EMI argues that NAVSEA's refusal to waive the IFB requirement that switchboards be listed on the QPL at bid opening, in favor of requiring QPL certification at award time, was improper. However, we have held that a QPL requirement in an IFB is a material requirement which must be met at the time set for bid opening and that a protester's failure to

satisfy it renders the bid nonresponsive. Wirt Inflatable Specialists, Inc., B-204673, December 31, 1981, 81-2 CPD 523. As we stated in the cited case:

"\* \* \* it is well established that when a solicitation requires a qualified product, a bid that offers a product that has not been successfully tested and approved for listing in the appropriate QPL prior to bid opening is not responsive to a material requirement of the IFB and must be rejected. The successful salt spray test completion after bid opening does not cure the nonresponsiveness of the bid, since the product was not qualified for QPL listing until after bid opening."

This holding of our Office is also in accordance with DAR § 1-1107.1(a) (Defense Acquisition Circular (DAC) No. 76-25, October 31, 1980), which provides:

"Whenever qualified products are to be obtained by the Government as end items, only bids \* \* \* offering products which are qualified for listing on the applicable QPL at the time set for openings of bids \* \* \* shall be considered in making awards."

Thus, we deny this ground of protest.

We also deny EMI's contention that in November 1981 NAVSEA delayed the original bid opening to allow Dynalec to become QPL listed. Although such delay also benefited EMI by permitting additional time for its QPL processing, we have no basis to question NAVSEA's position that the delay was properly granted solely because two of the four prospective bidders received the IFB late and needed additional bid preparation time. We also cannot question the Navy's reasoning for rejecting EMI's December 1981 request for an additional bid opening date extension. As stated by the Navy:

"\* \* \* the Navy extended the bid opening date \* \* \* because on November 2-3, only two weeks before the scheduled bid opening date, the contracting officer learned that the [only

then-approved] QPL bidders had not yet received or had just received the bid package, thus [in his judgment] having insufficient time to prepare their bids. While EMI [also] complains \* \* \* that the Navy denied its [December] request for a further extension of bid opening until it could qualify for QPL listing, it fails to mention that its request was necessarily for an [inappropriate] indefinite postponement of bid opening since neither EMI nor the Navy then knew when and if EMI's QPL application would be approved."

Finally, we cannot question the Navy's basis for making an award in early February of this year. The Navy explains that the award was required since a normal production time of 12 months is necessary for the fabrication of the switchboards, which are to be installed on the USS JOHN YOUNG commencing in February 1983. Any installation delay, the Navy further explains, would "cost the Government an estimated \$10,000 a day."

Accordingly, the protest is denied.

*Milton J. Arslan*  
for Comptroller General  
of the United States